

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 10/761,387 Confirmation No. 2425
Applicant(s) : Vigil et al. Customer No. 23838
Filed: : 22 Jan. 2004
Art Unit : 3763
Title: : METHOD FOR DELIVERING MEDICATION INTO AN ARTERIAL
WALL FOR PREVENTION OF RESTENOSIS
Examiner : L. Bouchelle

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

In response to the final Office Action of June 13, 2007, Applicants request pre-appeal review of this application for the reasons stated in the attached sheets. No amendments are being filed with this Request. This Request is being filed concurrently with a Notice of Appeal.

ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

March et al. (U.S. Patent No. 5,306,250), Wilcox et al. (U.S. Patent No. 5,681,289), and Nabel et al. (U.S. Patent No. 5,328,470) are the references applied in the final rejection of the claims under § 102(b) and § 103(a).

Applicants respectfully submit that this final rejection is clearly erroneous because at least one claim element is not present in the applied references. In response to the non-final Office Action,¹ Applicants argued that none of these references disclose a “dispensers consisting only of dispensers positioned in a single plane oriented substantially perpendicular to said axis” (emphasis added), as required by independent claims 1, 10, and 20.

In the final Office Action,² the Examiner stated:

microapertures positioned in only a single plane...however, the claim reads “being positioned in a plane oriented substantially perpendicular to said axis.” Examiner points out that any dispenser located on March is positioned in “a plane perpendicular to said axis.” There is not claim language requiring the dispensers to be positioned in a *single plane*. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Thus, the Examiner believed that the terms “a single plane” were not in the claims.

However, the Examiner did not examine the last-amended set of claims. As explained in Applicants response³ to the final Office Action, the Preliminary Amendment filed on January 22, 2004, amended the claims to recite “a single plane.”

In the Advisory Action of August 22, 2007, the Examiner has not acknowledged that the claims do recite “a single plane” and moreover, still has not indicated where this feature can be found in the applied references. For at least these reasons, Applicants respectfully submit that the Examiner’s final rejection is clearly erroneous.

¹ Applicants’ Response to Non-Final Office Action, filed Jan. 30, 2007.

² Final Office Action, dated June 13, 2007.

³ Applicants’ Response to Final Office Action, filed Aug. 3, 2007.

CONCLUSION

Applicants respectfully submit that the Examiner's final rejection is clearly erroneous. Accordingly, favorable action on this Pre-Appeal Brief Request for Review is respectfully requested.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

Date: 12 September 2007

/ Steven S. Yu /
Steven S. Yu (Reg. No. 58,776)

KENYON & KENYON LLP
1500 K Street, N.W., Suite 700
Washington, DC 20005
Tel: (202) 420-4200
Fax: (202) 420-4201